

² The Board notes that, following the March 3, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019, finding that she no longer had disability or residuals causally related to her accepted November 13, 2017 left shoulder conditions.

FACTUAL HISTORY

On November 13, 2017 appellant, then a 52-year-old sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she dislocated her left shoulder while lifting a package. OWCP accepted the claim for left shoulder joint dislocation, and subsequently expanded acceptance of the claim to include incomplete left shoulder rotator cuff tear or rupture. It paid appellant wage-loss compensation on the supplemental rolls beginning December 29, 2017 and on the periodic rolls beginning April 1, 2018.

Appellant underwent authorized left shoulder rotator cuff shoulder repair, and left shoulder capsule repair on April 27, 2018.

On November 2, 2018 OWCP referred appellant to Dr. Gregory Grau, a Board-certified orthopedic surgeon, together with a statement of accepted facts and medical record, for a second opinion evaluation as to whether she continued to have residuals or disability due to the accepted November 13, 2017 employment injury.

In a November 28, 2018 report, Dr. Grau, summarized appellant's history of injury and medical treatment. He reviewed her medical records and provided physical examination findings. Dr. Grau noted that appellant had not experienced further issues regarding her left shoulder, following left shoulder arthroscopy, and rotator cuff repair in April 2018. He did, however, note her current complaints regarding her right shoulder. Dr. Grau diagnosed status post left shoulder rotator cuff tear, and right shoulder impingement with acromioclavicular arthritis and underlying rotator cuff tear. He opined that her accepted left shoulder conditions had resolved. In support of this conclusion, Dr. Grau noted that the subjective and objective findings showed that appellant was status post left shoulder rotator cuff repair and doing well based on findings that she had regained range of motion and strength. He also opined that her right shoulder conditions, which he attributed to her work had not resolved based on positive examination findings and magnetic resonance imaging (MRI) scan findings. With respect to appellant's ability to work, Dr. Grau opined that she was disabled from her date-of-injury job, but would be able to work with right shoulder restrictions.

On April 26, 2019 OWCP requested clarification from Dr. Grau regarding whether appellant's accepted conditions had resolved. It noted that he had opined that the accepted left shoulder conditions had resolved; however, he had also opined that conditions of unspecified right shoulder rotator cuff tear or rupture, right shoulder impingement syndrome, and right shoulder primary osteoarthritis were employment related and had not resolved. OWCP requested that Dr. Grau provide a supplemental opinion explaining how these conditions had been caused or aggravated by the accepted November 13, 2017 employment injury and whether any of these conditions had resolved.

On April 17, 2019 OWCP requested that appellant's treating physician, Dr. Thomas D. Cervoni, a Board-certified orthopedic surgeon, address appellant's current medical status.

In response to OWCP's request, on May 2, 2019 Dr. Cervoni, agreed with Dr. Grau that appellant's accepted left shoulder conditions had resolved.

On July 30, 2019 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits as her accepted left shoulder condition had resolved based on Dr. Grau's second opinion report. It advised that the right shoulder conditions were not accepted conditions and he had not provided any medical reasoning explaining how those conditions were related to the accepted November 13, 2017 employment injury. In addition, OWCP noted that appellant's treating physician, Dr. Cervoni agreed that the accepted left shoulder conditions had resolved.

In an August 27, 2019 report, Daniel Coby, a physician assistant, provided examination findings, detailed the injury history, and diagnosed consequential right shoulder impingement syndrome, right rotator cuff tendonitis, and right rotator cuff tear, unspecified tear extent.

By decision dated October 1, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective October 2, 2019. It found that her accepted left shoulder conditions had resolved based on the opinions of Dr. Grau, an OWCP referral physician, and Dr. Cervoni, appellant's treating physician.

On October 29, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated March 3, 2020, the hearing representative affirmed OWCP's October 1, 2019 decision terminating appellant's wage-loss compensation and medical benefits, finding that the medical evidence established that her accepted left shoulder conditions had resolved.³

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

³ The hearing representative remanded the case for further development of the evidence on whether appellant sustained consequential right shoulder conditions.

⁴ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019, as she no longer had disability or residuals causally related to her accepted left shoulder conditions.

In a report dated November 28, 2018, Dr. Grau concluded that appellant's accepted left shoulder conditions had resolved. He noted that she had a good recovery and had no left shoulder issues following her April 2018 surgical procedure. Dr. Grau opined that appellant's left shoulder conditions had resolved without residuals and that any remaining disability was due to her right shoulder conditions.

Dr. Cervoni, appellant's attending physician, agreed in a report dated May 2, 2019 that appellant's accepted left shoulder conditions had resolved.

As the evidence of record establishes that appellant no longer has disability or residuals due to her accepted left shoulder employment conditions, the Board finds that OWCP properly terminated her entitlement to wage-loss compensation and medical benefits effective October 2, 2019.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019, as she no longer had disability or residuals causally related to her accepted November 13, 2017 left shoulder conditions.

⁵ *A.T., id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *see M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *A.T.*, *supra* note 4; *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *A.T.*, *supra* note 4; *K.W.*, *supra* note 6; *see A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board